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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,844	03/30/2004	Brian Boyle	1-24766	3126

46582 7590 10/03/2005

MACMILLAN, SOBANSKI & TODD, LLC  
 ONE MARITIME PLAZA - FOURTH FLOOR  
 720 WATER STREET  
 TOLEDO, OH 43604

EXAMINER

KRAMER, DEVON C

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/812,844

Applicant(s)

BOYLE, BRIAN

Examiner

Devon C. Kramer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5,12,13 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 6-11 14-16 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

- 1) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 2) Claims 1-2, 6-10, 14-16, 18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application.

In re claims 1-2, 6-9, 16, 18 and 20-21, Evans provides a drum-in-hat disc brake assembly having a disc service brake (col. 2 lines 11-18) and an emergency brake (25), the assembly comprising: a backing plate (21) adapted to support a drum brake shoe assembly of the drum-in-hat parking and emergency brake; a caliper bracket (26, 27) adapted to support a disc brake caliper assembly; a drum-in-hat adapter (22) adapter adapted to support a disc brake caliper assembly; wherein the drum-in-hat parking and emergency brake includes a park brake cable end assembly (61) including a lever (55) supported on a link (69). Evans lacks the teaching of the lever end and a clevis.

Ikeda teaches a lever end that is generally G-shaped having a rear leg (90), a bottom leg (93), a front leg (hook portion) and a slot formed therein, but lacks the teaching of the means used to attach the cable. Please note that the end portion of Ikeda has the same shape as that of the instant application and therefor meets the limitations of claim 6.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the lever of Evans with a G-shaped end of Ikeda to ensure that the cable stays attached to the lever by means of hooking it in place.

Figure 3 of applicant's prior art teaches a clevis shaped cable end.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the assembly of Evans as modified by Ikeda with a clevis as taught by figure 3 of the admitted prior art of the instant application merely to provide a known means to attach a cable to a lever that is secure and has a minimal chance of becoming disconnected.

In re claims 2 and 10, see Evans element 68 through which a pin is inserted.

In re claim 7, see item 65 of Evans.

IN re claim 8, Evans lacks the claimed arrangement of the boot seal.

Ikeda teaches a boot seal (figure 7) that presses the lever and the link together.

It would have been obvious to one of ordinary skill in the art to have provided the assembly of Evans with a boot seal as taught by Ikeda merely to prevent contaminants from getting on the assembly reducing the life of the brake.

3) Claims 3-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application and even further in view of Hara et al (6427653).

In re claim 3-4, Evans is silent to how the pivot pin is attached. It is well known in the art to assembly a pivot pin either by pressing or extruding.

Hara et al teaches extruding a pivot pin (53).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have attached the pivot pin of Evans by extruding as taught by Hara et al merely to ensure a tight secure fit for the pin and to lower the chances of it becoming disconnected.

4) Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5180037) in view of Ikeda (6390248) and further in view of figure 3 of applicant's admitted prior art in the instant application and even further in view of Heckel (6116103).

Evans, Ikeda and the prior art of figure 3 are silent to the material of the lever.

Heckel teaches a brake lever made of steel.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the levers of Evans, Ikeda or the prior art from steel merely as a design choice and to provide a strong durable material.

### ***Response to Arguments***

5) Applicant's arguments filed 7/29/05 have been fully considered but they are not persuasive. Applicant argues that none of the references cited either alone or in combination provide the claimed G-shaped lever. The novelty of applicant's lever seems

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to be in the fact that either an S-shaped or a clevis shaped cable end can be used with the lever. The examiner would like to point out that no where in the drawings is it shown the way in which either of these cables can connect to the lever of the instant application. The rejection stands because applicant has not provided enough evidence that the shape of the lever is an improvement over prior levers. Please see *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

### ***Conclusion***

**6) THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**7)** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C. Kramer whose telephone number is 571-272-7118. The examiner can normally be reached on Mon-Fri 8-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devon C Kramer  
Examiner  
Art Unit 3683

DK

*Robert A. Siconolfi* 9/28/05  
ROBERT A. SICONOLFI  
PATENT EXAMINER